

111TH CONGRESS
1ST SESSION

H. R. 2199

To amend the Occupational Safety and Health Act of 1970 to authorize the Secretary of Labor to prevent employee exposure to imminent dangers.

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 2009

Mr. BISHOP of New York (for himself, Ms. WOOLSEY, Mr. HARE, Mr. KUCINICH, and Mr. SABLAN) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the Occupational Safety and Health Act of 1970 to authorize the Secretary of Labor to prevent employee exposure to imminent dangers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Workers
5 From Imminent Dangers Act of 2009”.

1 **SEC. 2. STREAMLINED PROCEDURES TO COUNTERACT IM-**
2 **MINENT DANGERS.**

3 (a) PROCEDURES.—Section 13 of the Occupational
4 Safety and Health Act of 1970 (29 U.S.C. 662) is amend-
5 ed—

6 (1) by striking subsections (a), (b), and (c) and
7 inserting the following:

8 “(a)(1) If the Secretary determines, on the basis of
9 an inspection or investigation under this Act, that a condi-
10 tion or practice in a place of employment is such that an
11 imminent danger to safety or health exists that could rea-
12 sonably be expected to cause death or serious physical
13 harm or permanent impairment of the health or functional
14 capacity of employees if not corrected immediately or be-
15 fore the imminence of such danger can be eliminated
16 through the enforcement procedures otherwise provided by
17 this Act, the Secretary shall inform the employer and the
18 affected employees and their representative of such immi-
19 nent danger and shall request that the condition or prac-
20 tice be corrected immediately or that employees be imme-
21 diately removed from exposure to such danger.

22 “(2) The Secretary shall not prevent the entry or con-
23 tinued activity of employees whose presence is necessary
24 to avoid, correct, or remove such imminent danger or to
25 maintain the capacity of a continuous process operation
26 to resume normal operations without a complete cessation

1 of operations or, where a cessation of operations is nec-
2 essary, to permit such to be accomplished in a safe and
3 orderly manner.

4 “(3) If the employer refuses to comply with the re-
5 quest under paragraph (1), the Secretary shall imme-
6 diately issue an order requiring the employer to cause all
7 persons, except those employees referred to in paragraph
8 (2), to be withdrawn from, and to be prohibited from en-
9 tering, such area until an authorized representative of the
10 Secretary determines that such imminent danger and the
11 conditions or practices which caused such imminent dan-
12 ger no longer exist. The issuance of an order under this
13 subsection shall not preclude the issuance of a citation
14 under section 9 or the proposing of a penalty under section
15 17. The fact that an order under paragraph (3) has been
16 issued shall be noted in any citation issued pursuant to
17 section 9 with respect to the hazard involved.

18 “(4) Each finding made and order issued under this
19 section shall be given promptly to the employer by the per-
20 son making such finding or order. All such findings and
21 orders shall be in writing, and shall be signed by the per-
22 son making them and shall contain a detailed description
23 of the conditions or practices which cause and constitute
24 an imminent danger and a description of the area of the

1 place of employment from which persons must be with-
2 drawn and prohibited from entering.

3 “(5) Any order issued pursuant to subsection (a) may
4 be modified or terminated by an authorized representative
5 of the Secretary following consultation with the employer
6 and any representative of the affected employees. Any
7 order issued under subsection (a) shall remain in effect
8 until vacated, modified, or terminated by the Secretary,
9 or modified or vacated by the Commission pursuant to
10 subsection (d).”; and

11 (2) by redesignating subsection (d) as sub-
12 section (b) and after such subsection inserting the
13 following:

14 “(c) No person shall discharge or in any manner dis-
15 criminate against any employee because such employee
16 has refused to perform a duty that has been identified as
17 the source of an imminent danger by any order issued
18 under subsection (a). The right to refuse to perform such
19 a duty shall be in addition to any other right to refuse
20 to perform hazardous work that is afforded to employees
21 by this Act, by standards or regulations issued pursuant
22 to this Act, by contract, or by other applicable law.

23 “(d)(1) Any employer notified of an order under sub-
24 section (a) or any affected employees or representative of
25 affected employees notified of the issuance, modification,

1 or termination of such an order may apply to the Commis-
2 sion within 30 days of such notification for reinstatement,
3 modification or vacation of such order. The Commission
4 shall forthwith afford an opportunity for a hearing (in ac-
5 cordance with section 554 of title 5, United States Code,
6 but without regard to subsection (a)(3) of such section)
7 and thereafter shall issue an order, based upon findings
8 of fact, vacating, affirming, modifying, or terminating the
9 Secretary's order. The Commission may not grant tem-
10 porary relief from the issuance of any order under sub-
11 section (a).

12 “(2) The Commission shall take whatever action is
13 necessary to expedite proceedings under this subsection.

14 “(e) The Secretary may institute a civil action for re-
15 lief, including a permanent or temporary injunction, re-
16 straining order, or any other appropriate order in the dis-
17 trict court of the United States for the district in which
18 a place of employment is located or in which the employer
19 has his principal office, whenever such employer or his
20 agent violates or fails or refuses to comply with any order
21 or decision issued under this section.”.

22 (b) PENALTIES.—Section 17 of such Act is amended
23 by redesignating subsections (h) through (l) as subsections
24 (i) through (m), respectively, and by inserting after sub-
25 section (g) the following:

1 “(h) Any employer who fails to remove all employees
2 from exposure to a hazard referenced in orders issued
3 under section 13(a) shall be assessed a civil penalty of not
4 less than \$10,000 and not more than \$50,000 for each
5 day during which an employee continues to be exposed to
6 the hazard, unless the Commission or the district court
7 determines the condition or practice is not of such nature
8 as to be covered by section 13(a).”.

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